

REMARKS

Claims 1 through 14 and 16 through 22 are pending in the application. Claims 4 and 6 remain withdrawn from consideration. Applicants note with appreciation the fact that the Office Action (Action) states that claim 20 would be allowable if presented in independent form. Please note that new claim 22 recites the feature of claim 20 in independent form, and thus is allowable.

Claims 1 through 3, 5, 8 through 11, 14, and 16 through 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,335,721 to Matthews. Matthews discloses a tampon with a series of parallelly aligned fibers fused to a withdrawal string positioned transversely near one end of the fibers.

Claims 1, 9 and 14 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,374,258 to Lloyd et al. (Lloyd). Lloyd discloses a tampon with an absorbent core of a general cylindrical shape having a liquid pervious cover. The cover layer has a plurality of parallel ribs interconnected by a plurality of fibrillated strands in the transverse direction.

Claims 1 through 3, 5, 7 through 11, 13, 14, 16, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,817,077 to Foley et al. (Foley). Foley discloses a tampon with a coverstock. The tampon is made with absorbent and non-absorbent fibers for preventing the drying of the vaginal wall.

Claims 1 through 3, 5, 8 through 11, 16, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,986,511 to Olofsson et al. (Olofsson). Olofsson discloses a tampon having a resilient rotund absorbent fibrous layer supported on a core of stiff material. The tampon can be inserted without the use of an applicator.

Claim 1 recites a dry expanding tampon pledge having a plurality of non-absorbent fibers and a plurality of absorbent fibers. The plurality of non-absorbent fibers and the plurality of absorbent fibers are blended together to form the dry expanding tampon pledge. Immediately after complete ejection from an applicator, and prior to contact with menses, the dry expanding tampon pledge has a free diameter at a widest point from about 25% to about 300% larger than the diameter of the dry expanding tampon pledge in the applicator.

Claim 16 recites a dry expanding tampon pledge having a plurality of non-absorbent fibers and a plurality of absorbent fibers. The plurality of non-absorbent fibers and the plurality of absorbent fibers are blended together to form the dry expanding tampon pledge. A percent ratio of the plurality of non-absorbent fibers to the plurality of absorbent fibers is about 25/75 to about 65/35. Immediately after complete ejection from an applicator, and prior to contact with menses, the dry expanding tampon pledge has a free diameter at a widest point from about 25% to about 300% larger than the diameter of the dry expanding tampon pledge in the applicator.

Claim 18 recites a dry expanding tampon pledge having a plurality of non-absorbent fibers selected from the group consisting of polyester, polypropylene, polyethylene, aramid, nylon, acrylic, bicomponent, and mixtures thereof and a plurality of absorbent fibers. The plurality of absorbent fibers are selected from the group consisting of rayon, lyocell, wood pulp, cotton, superabsorbent, and any combinations thereof. The plurality of non-absorbent fibers and the plurality of absorbent fibers are blended together to form the dry expanding tampon pledge. Immediately after complete ejection from an applicator, and prior to contact with menses, the dry expanding tampon pledge has a free diameter at a widest point from about 25% to about 300% larger than the diameter of the dry expanding pledge in the applicator.

It is respectfully submitted that none of the cited references disclose or suggest a dry expanding tampon pledge, let alone one that has, immediately following expulsion and prior to contacting menses, a free diameter of about 25% to about 300% larger than

the diameter of the pledget in the applicator, as recited in claims 1, 16 and 18. As noted in the specification, notably on pages 10-12, the dry expansion tampon pledget of the present invention results in a tampon pledget that is more comfortable to a user without compromising the absorption properties of the pledget.

The Action maintains that each of the cited references is inherently fully capable of the claimed invention. It appears to be the Examiner's contention that the prior art is fully capable of being compressed and placed in an applicator and after ejection will expand, as claimed. The rationale provided for this contention is "The amount of expansion clearly depends on the diameter prior to ejection and this depends on the size (diameter) of the applicator itself, so the prior art is inherently capable of being compressed by 25%, placed in an applicator and then expelled and allowed to return to its original dimensions."

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)(citations omitted).

The Action clearly fails to cite any rationale or extrinsic evidence found in the cited patents, or anywhere else, that makes clear that the prior art pledges possess the "dry expansion" properties unexpectedly found with the presently claimed tampon pledget. Therefore, the Action impermissibly relies on a mere possibility that these "dry expansion" properties are capable in the cited prior art. Absent any extrinsic evidence making clear that the "dry expansion" properties are necessarily present in the prior art, the Action cannot and does not establish inherency. It is only through the present

application that such a "dry expanding" tampon pledge is disclosed or suggested. Therefore, the dry expanding tampon pledge recited in claims 1, 16 and 18 is clearly not anticipated by the cited art.

Moreover, contrary to the contention set forth in the Action, as described above, the enclosed Declaration and accompanying data clearly indicates that compressed tampon pledges do not inherently possess dry expansion properties, as claimed. To the contrary, compressed tampon pledges remain in their compressed state immediately after expulsion from a tampon applicator and prior to contacting moisture and/or menses.

Therefore, it is respectfully submitted that none of the cited references anticipate the claimed invention and as such, claims 1, 16 and 18, as well as claims 2, 3, 5, 7 through 14, 17, 19, 20 and 21, which depend directly or indirectly from one of claims 1, 16 and 18, are patentably distinguishable over Matthews, Lloyd, Foley and Olofsson, taken alone or in combination. Applicants respectfully request reconsideration and withdrawal of the §102(b) rejections and passage of the application to allowance.

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Respectfully submitted,



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